

INFORMATION REPORT

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COUNTRY Germany (Russian) ~~CONFIDENTIAL~~
SUBJECT Proposed Regulations for the Criminal Police

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SUPPLEMENT TO
REPORT NO.

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1. The German Ministry of the Interior, Abt. K, has prepared a thesis proposing a new law governing the relationship between the criminal police and the State's Attorneys in penal prosecutions. This has been submitted to the SMA for approval.

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2. The thesis begins with a long preamble giving the historic background of the present laws which regard the criminal police as individual members of the police force assigned duty as auxiliary investigators assisting the State's Attorneys in their prosecution of crimes. It then continues by explaining the fallacy of such a situation in a modern society and boasting about the "leading role of the police in connection with progressive measures such as land reform and the concomitant expropriation of the Junkers and big land-owners, creation and establishment on a solid basis of the publicly owned enterprises, etc." It adds "that the State's Attorneys have hardly given evidence, even after the collapse, that they can adequately adapt themselves to political necessities and progressive criminological practice..... This is the inevitable result of the traditional attachment to a dogmatic view of criminal procedures..... The police of the Soviet zone of occupation, during the brief period of its existence, has already shown that it can fulfill all the prerequisites for the development of a true People's Police. It also has that contact with the people necessary for the investigative process, which the State's Attorneys lack."

3. The following themes are to be the basis for the new law:

- A. Preliminary proceedings will be separated into
 - a. Investigative proceedings
 - b. Preparation of the indictment.

II. The investigative proceedings will include the investigation of evidence and the identification, arrest, and conviction of the perpetrator.

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III. The criminal police will carry out the entire investigative proceedings. They will act independently. The State's Attorneys will not interfere in the investigation, nor may they give orders or assignments to the criminal police. The whole concept of "auxiliary to the State's Attorneys" will lapse.

IV. The criminal police will start investigative proceedings as soon as they receive a denunciation, or are informed in some other manner of a possible criminal action.

V. Denunciations of culpable offenses which are submitted to the courts or to the State's Attorneys will be forwarded immediately to the criminal police so that they may initiate investigative proceedings.

VI. The criminal police may independently order and carry out confiscations and searches in the process of an investigation, given the usual prerequisites of the criminal procedure code. A ratification by the court or by the State's Attorneys will not be necessary.

VII. On presentation of legal grounds for arrest, an investigation arrest may be ordered on a warrant issued by the criminal police. The warrant of arrest must be ratified by the State's Attorneys; however, pending ratification the warrant is valid.

VIII. Habeas corpus proceedings will be handled by the State's Attorneys.

IX. The warrant may be rescinded only by the criminal police unit conducting the investigation. The rescission must be approved by the head of the appropriate criminal department before the accused may be released. The accused may not be released on bail.

X. Temporary detention in insane asylums will also be in accordance with items VII-IX (above).

XI. The system of preliminary inquiry by a judge will be discontinued. The function of examining judge will be taken over by the criminal police.

XII. The criminal police have the right to refuse to reveal sources of evidence only within the boundaries of the criminal procedure.

XIII. The criminal police are not authorized to administer oaths to witnesses and experts. They may administer oaths of allegiance (para. 156 of the Penal Code), but may not enforce them.

XIV. The investigation will be completed with a final report. The criminal police will then forward the entire investigative material to the State's Attorneys immediately. A suspension of the criminal prosecution in preliminary investigation may be undertaken only by the State's Attorneys.

XV. If the State's Attorneys find, after examining the investigative material, that a further investigation is necessary, they will return the material to the criminal police. They will at the same time specify in detail wherein they deviate in opinion.

XVI. The State's Attorneys must inform the criminal police of the suspension of proceedings or the rescinding of the indictment.

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XVII. If there is any difference of opinion between the criminal police and the State's Attorneys on the question of investigative arrest (items 7 and 8), the suspension of proceedings (item 14), and the need for further investigation (item 15), this will be decided by a special commission consisting of:

- a. The Attorney General of the State Supreme Court
- b. The head of the State Criminal Police
- c. The head of the legal committee of the Landtag.

XVIII. The majority decision of the commission will prevail. In case of a dispute over the initiating or extension of investigative arrest, the arrest order will hold pending the decision of the commission.

XIX. The criminal police may use members of other organs of the police as well as members of certain government agencies to assist in the carrying out of investigations. These assistants are obliged to carry out the investigations or assignments of the criminal police. The designation of the persons to whom this is applicable, as well as the duties and privileges of these assistants, will be the subject of further decrees.

XX. The preparation and filing of the indictment (item 16) is the function of the State's Attorneys.

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